

103D CONGRESS
1ST SESSION

S. 521

AN ACT

To assist the development of tribal judicial systems,
and for other purposes.

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To assist the development of tribal judicial systems, and
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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—GENERAL PROVISIONS**

4 **SEC. 101. SHORT TITLE.**

5 This Act may be cited as the “Indian Tribal Justice
6 Systems Act”.

1 **SEC. 102. FINDINGS.**

2 Congress finds and declares that—

3 (1) there is a government-to-government rela-
4 tionship between the United States and each Indian
5 tribe;

6 (2) the United States has a trust responsibility
7 to each tribal government that includes the protec-
8 tion of the sovereignty of each tribal government;

9 (3) Congress, through statutes, treaties, and
10 the exercise of administrative authorities, has recog-
11 nized the self-determination, self-reliance, and inher-
12 ent sovereignty of Indian tribes;

13 (4) Indian tribes possess the inherent authority
14 to establish their own form of government, including
15 tribal justice systems;

16 (5) tribal justice systems are an essential part
17 of tribal governments and serve as important forums
18 for ensuring public health and safety and the politi-
19 cal integrity of tribal governments;

20 (6) Congress and the Federal courts have re-
21 peatedly recognized tribal justice systems as the ap-
22 propriate forums for the adjudication of disputes af-
23 fecting personal and property rights;

24 (7) traditional tribal justice practices are essen-
25 tial to the maintenance of the culture and identity
26 of Indian tribes and to the goals of this Act;

1 (8) tribal justice systems are inadequately fund-
2 ed and the lack of adequate funding impairs their
3 operation; and

4 (9) tribal government involvement in and com-
5 mitment to improving tribal justice systems is essen-
6 tial to the accomplishment of the goals of this Act.

7 **SEC. 103. DEFINITIONS.**

8 For purposes of this Act:

9 (1) The term “Bureau” means the Bureau of
10 Indian Affairs of the Department of the Interior.

11 (2) The term “Courts of Indian Offenses”
12 means the courts established pursuant to part 11 of
13 title 25, Code of Federal Regulations.

14 (3) The term “Indian tribe” means any Indian
15 tribe, band, nation, pueblo, or other organized group
16 or community, including any Alaska Native entity,
17 which administers justice under the authority of the
18 United States or the inherent authority of the native
19 entity and which is recognized as eligible for the spe-
20 cial programs and services provided by the United
21 States to Indian tribes because of their status as
22 Indians.

23 (4) The term “judicial personnel” means any
24 judge, magistrate, court counselor, court clerk, court
25 administrator, bailiff, probation officer, officer of the

1 court, dispute resolution facilitator, or other official,
2 employee, or volunteer within the tribal justice
3 system.

4 (5) The term “Office” means the Office of
5 Tribal Justice Support within the Bureau of Indian
6 Affairs.

7 (6) The term “Secretary” means the Secretary
8 of the Interior.

9 (7) The term “tribal organization” means any
10 organization defined in section 4(l) of the Indian
11 Self-Determination and Education Assistance Act.

12 (8) The term “tribal justice system” means the
13 entire justice system of an Indian tribe, including
14 but not limited to traditional methods and forums
15 for dispute resolution, lower courts, appellate courts
16 (including intertribal appellate courts), alternative
17 dispute resolution systems, and circuit rider systems,
18 established by inherent tribal authority without re-
19 gard to whether they constitute a court of record.

20 **TITLE II—TRIBAL JUSTICE** 21 **SYSTEMS**

22 **SEC. 201. OFFICE OF TRIBAL JUSTICE SUPPORT.**

23 (a) ESTABLISHMENT.—There is hereby established
24 within the Bureau the Office of Tribal Justice Support.
25 The purpose of the Office shall be to further the devel-

1 opment, operation, and enhancement of tribal justice
2 systems and Courts of Indian Offenses.

3 (b) TRANSFER OF EXISTING FUNCTIONS AND PER-
4 SONNEL.—All functions performed before the date of the
5 enactment of this Act by the Branch of Judicial Services
6 of the Bureau and all personnel assigned to such Branch
7 as of the date of the enactment of this Act are hereby
8 transferred to the Office of Tribal Justice Support. Any
9 reference in any law, regulation, executive order, reorga-
10 nization plan, or delegation of authority to the Branch of
11 Judicial Services is deemed to be a reference to the Office
12 of Tribal Justice Support.

13 (c) FUNCTIONS.—Except as otherwise provided in
14 title III, in addition to the functions transferred to the
15 Office pursuant to subsection (b), the Office shall perform
16 the following functions:

17 (1) Provide funds to Indian tribes and tribal or-
18 ganizations for the development, enhancement, and
19 continuing operation of tribal justice systems.

20 (2) Provide technical assistance and training,
21 including programs of continuing education and
22 training for personnel of Courts of Indian Offenses.

23 (3) Study and conduct research concerning the
24 operation of tribal justice systems.

1 (4) Promote cooperation and coordination be-
2 tween tribal justice systems, the Federal judiciary,
3 and State judiciary systems.

4 (5) Oversee the continuing operations of the
5 Courts of Indian Offenses.

6 (d) NO IMPOSITION OF STANDARDS.—Nothing in
7 this Act shall be deemed or construed to authorize the Of-
8 fice to impose justice standards on Indian tribes.

9 (e) ASSISTANCE TO TRIBES.—(1) The Office shall
10 provide training and technical assistance to any Indian
11 tribe or tribal organization upon request. Technical assist-
12 ance and training which may be provided by the Office
13 shall include, but is not limited to, assistance for the devel-
14 opment of—

15 (A) tribal codes and rules of procedure;

16 (B) tribal court administrative procedures and
17 court records management systems;

18 (C) methods of reducing case delays;

19 (D) methods of alternative dispute resolution;

20 (E) tribal standards for judicial administration
21 and conduct; and

22 (F) long-range plans for the enhancement of
23 tribal justice systems.

24 (2) Technical assistance and training provided pursu-
25 ant to paragraph (1) may be provided through direct serv-

1 ices, by contract with independent entities, or through
2 grants to Indian tribes and tribal organizations.

3 (f) INFORMATION CLEARINGHOUSE ON TRIBAL JUSTICE SYSTEMS.—The Office shall establish and maintain
4 an information clearinghouse (which shall include an elec-
5 tronic data base) on tribal justice systems, including, but
6 not limited to, information on staffing, funding, model
7 tribal codes, tribal justice activities, and tribal judicial de-
8 cisions. The Office shall take such action as may be nec-
9 essary to ensure the confidentiality records, and other
10 matters involving privacy rights.

12 **SEC. 202. SURVEY OF TRIBAL JUDICIAL SYSTEMS.**

13 (a) IN GENERAL.—Not later than 6 months after the
14 date of the enactment of this Act, the Secretary, in con-
15 sultation with Indian tribes, shall enter into a contract
16 with a non-Federal entity to conduct a survey of condi-
17 tions of tribal justice systems and Courts of Indian Of-
18 fenses to determine the resources and funding, including
19 base support funding, needed to provide for expeditious
20 and effective administration of justice. The Secretary, in
21 like manner, shall annually update the information and
22 findings contained in the survey required under this sec-
23 tion. Any survey conducted pursuant to this section shall
24 be completed and its findings reported by the Secretary
25 and the Congress not later than 12 months after the date

1 on which the contract for the conduct of the survey is exe-
2 cuted.

3 (b) LOCAL CONDITIONS.—In the course of any an-
4 nual survey, the non-Federal entity shall document local
5 conditions of each Indian tribe, including, but not limited
6 to—

7 (1) the geographic area and population to be
8 served;

9 (2) the levels of functioning and capacity of the
10 tribal justice system;

11 (3) the volume and complexity of the case loads;

12 (4) the facilities, including detention facilities,
13 and program resources available;

14 (5) funding levels and personnel staffing re-
15 quirements for the tribal justice system; and

16 (6) the training and technical assistance needs
17 of the tribal justice system.

18 (c) CONSULTATION WITH INDIAN TRIBES.—The
19 non-Federal entity shall actively consult with Indian tribes
20 and tribal organizations in the development and conduct
21 of the survey, including updates thereof, of conditions of
22 tribal justice systems. Indian tribes and tribal organiza-
23 tions shall have the opportunity to review and make rec-
24 ommendations regarding the findings of the survey, in-
25 cluding updates thereof, prior to final publication of the

1 survey, or any update thereof. After Indian tribes and
2 tribal organizations have reviewed and commented on the
3 results of the survey, or any update thereof, the non-Fed-
4 eral entity shall report its findings, together with the com-
5 ments and recommendations of the Indian tribes and trib-
6 al organizations, to the Secretary, the Committee on In-
7 dian Affairs of the Senate, and the Subcommittee on Na-
8 tive American Affairs of the Committee on Natural Re-
9 sources of the House of Representatives.

10 **SEC. 203. BASE SUPPORT FUNDING FOR TRIBAL JUSTICE**
11 **SYSTEMS.**

12 (a) IN GENERAL.—Pursuant to the Indian Self-De-
13 termination and Education Assistance Act, the Secretary
14 is authorized to enter into contracts, grants, or agree-
15 ments with Indian tribes and tribal organizations, for the
16 development, enhancement, and continuing operation of
17 tribal justice systems and traditional tribal judicial prac-
18 tices by Indian tribal governments.

19 (b) PURPOSES FOR WHICH FINANCIAL ASSISTANCE
20 MAY BE USED.—Financial assistance provided through
21 contracts, grants, or agreements entered into pursuant to
22 this section may be used for—

23 (1) planning for the development, enhancement,
24 and operation of tribal justice systems;

25 (2) the employment of judicial personnel;

1 (3) training programs and continuing education
2 for tribal judicial personnel;

3 (4) the acquisition, development, and mainte-
4 nance of a law library or computer assisted legal re-
5 search capacities;

6 (5) the development, revision, and publication
7 of tribal codes, rules of practice, rules of procedure,
8 and standards of judicial performance and conduct;

9 (6) the development and operation of records
10 management systems;

11 (7) the construction or renovation of facilities
12 for tribal justice systems;

13 (8) membership and related expenses for par-
14 ticipation in national and regional organizations of
15 tribal justice systems and other professional organi-
16 zations; and

17 (9) the development and operation of other in-
18 novative and culturally relevant programs and
19 projects, including programs and projects for—

20 (A) alternative dispute resolution;

21 (B) tribal victims assistance or victims
22 services;

23 (C) tribal probation services or diversion
24 programs;

1 (D) juvenile justice services and multidisci-
2 plinary investigations of child abuse; and

3 (E) traditional tribal judicial practices, tra-
4 ditional tribal justice systems and traditional
5 methods of dispute resolution.

6 (c) FORMULA.—(1) Not later than 180 days after the
7 date of the enactment of this Act, the Secretary, with the
8 full participation of Indian tribes, shall establish and pro-
9 mulgate by regulation, a formula which establishes base
10 support funding for tribal justice systems in carrying out
11 this section.

12 (2) The Secretary shall assess caseload and staffing
13 needs for tribal justice systems and take into account
14 unique geographic and demographic conditions. In the as-
15 sessment of these needs, the Secretary shall work coopera-
16 tively with Indian tribes and tribal organizations and shall
17 refer to any data developed as a result of the surveys con-
18 ducted pursuant to section 202 and to comparable rel-
19 evant assessment standards developed by the Judicial
20 Conference of the United States, the National Center for
21 State Courts, and the American Bar Association.

22 (3) Factors to be considered in the development of
23 the base support funding formula shall include, but are
24 not limited to—

1 (A) the caseload and staffing needs identified
2 under paragraph (2) of this section;

3 (B) the geographic area and population to be
4 served;

5 (C) the volume and complexity of the caseloads;

6 (D) the projected number of cases per month;

7 (E) the projected number of persons receiving
8 probation services or participating in diversion pro-
9 grams; and

10 (F) any special circumstances warranting addi-
11 tional financial assistance.

12 (4) In developing the formula for base support fund-
13 ing for tribal judicial systems under this section, the Sec-
14 retary shall ensure equitable distribution of funds.

15 **TITLE III—TRIBAL JUDICIAL** 16 **CONFERENCES**

17 **SEC. 301. ESTABLISHMENT; FUNDING.**

18 (a) ESTABLISHMENT.—In any case in which two or
19 more governing bodies of Indian tribes establish a regional
20 or national judicial conference, such conference shall be
21 considered a tribal organization and eligible to contract
22 for funds under this title, if each member tribe served by
23 the conference has adopted a tribal resolution which au-
24 thorizes the tribal judicial conference to receive and ad-
25 minister funds under this title. At the written request of

1 any tribal judicial conference, a contract entered into pur-
 2 suant to this title shall authorize the conference to receive
 3 funds and perform any or all of the duties of the Bureau
 4 and the Office under sections 201 and 202 of this Act
 5 on behalf of the members of such conference.

6 (b) CONTRACT AUTHORITY.—Pursuant to the Indian
 7 Self-Determination and Education Assistance Act, the
 8 Secretary is authorized, subject to appropriations, to enter
 9 into contracts, grants, or agreements with a tribal judicial
 10 conference for the development, enhancement, and con-
 11 tinuing operation of tribal justice systems of Indian tribes
 12 which are members of such conference.

13 (c) FUNDING.—The Secretary is authorized to pro-
 14 vide funding to tribal judicial conferences pursuant to con-
 15 tracts entered into under the authority of the Indian Self-
 16 Determination and Education Assistance Act for adminis-
 17 trative expenses incurred by such conferences.

18 **TITLE IV—STUDY OF TRIBAL/** 19 **FEDERAL COURT REVIEW**

20 **SEC. 401. STUDY.**

21 (a) TRIBAL/FEDERAL COURT REVIEW.—A com-
 22 prehensive study shall be conducted in accordance with
 23 subsection (b), of the treatment by tribal justice systems
 24 of matters arising under the Indian Civil Rights Act (25
 25 U.S.C. 1301 et seq.) and of other Federal laws for which

1 tribal justice systems have jurisdictional authority and
2 regulations promulgated by Federal agencies pursuant to
3 the Indian Civil Rights Act and other Acts of Congress.
4 The study shall include an analysis of those Indian Civil
5 Rights Act cases that were the subject of Federal court
6 review from 1968 to 1978 and the burden, if any, on tribal
7 governments, tribal justice systems, and Federal courts of
8 such review. The study shall address the circumstances
9 under which Federal court review of actions arising under
10 the Indian Civil Rights Act may be appropriate or war-
11 ranted.

12 (b) TRIBAL/FEDERAL COURT REVIEW STUDY
13 PANEL.—The study required in subsection (a) shall be
14 conducted by the Tribal/Federal Court Review Study
15 Panel in consultation with tribal governments.

16 **SEC. 402. TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.**

17 (a) COMPOSITION.—The Tribal/Federal Court Re-
18 view Study Panel shall consist of—

19 (1) four representatives of tribal governments,
20 including tribal court judges, two of whom shall be
21 appointed by the Speaker of the House of Rep-
22 resentatives and two of whom shall be appointed by
23 the President pro tempore of the Senate; and

24 (2) four members of the United States Courts
25 of Appeal, of whom one shall be appointed by the

1 chief judge of the eighth circuit, one by the chief
2 judge of the ninth circuit, one by the chief judge of
3 the tenth circuit, and one by the chief judge of the
4 Federal circuit.

5 (b) PERSONNEL.—The Tribal/Federal Court Review
6 Study Panel may employ, on a temporary basis, such per-
7 sonnel as are required to carry out the provisions of this
8 title.

9 (c) FINDINGS.—The Tribal/Federal Court Review
10 Study Panel, not later than the expiration of the 12-month
11 period following the date on which moneys are first made
12 available to carry out this title, shall submit its findings
13 and recommendations to—

14 (1) Congress;

15 (2) the Secretary;

16 (3) the Director of the Administrative Office of
17 the United States Courts; and

18 (4) each Indian tribe.

19 (d) TERMINATION.—Thirty days after the Panel has
20 submitted its findings and recommendations under sub-
21 section (c), the Panel shall cease to exist.

22 **TITLE V—AUTHORIZATIONS**

23 **SEC. 501. TRIBAL JUSTICE SYSTEMS.**

24 (a) OFFICE.—There are authorized to be appro-
25 priated to carry out the provisions of sections 201, 202,

1 and 301(a) of this Act, \$7,000,000 for each of the fiscal
2 years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.
3 None of the funds provided pursuant to the authorizations
4 under this subsection may be used for the administrative
5 expenses of the Office.

6 (b) BASE SUPPORT FUNDING FOR TRIBAL JUSTICE
7 SYSTEMS AND JUDICIAL CONFERENCES.—There are au-
8 thorized to be appropriated to carry out the provisions of
9 section 203 of this Act, \$50,000,000 for each of the fiscal
10 years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

11 (c) ADMINISTRATIVE EXPENSES FOR OFFICE.—
12 There are authorized to be appropriated, for the adminis-
13 trative expenses of the Office, \$500,000 for each of the
14 fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and
15 2000.

16 (d) ADMINISTRATIVE EXPENSES FOR TRIBAL JUDI-
17 CIAL CONFERENCES.—There are authorized to be appro-
18 priated, for the administrative expenses of tribal judicial
19 conferences, \$500,000 for each of the fiscal years 1994,
20 1995, 1996, 1997, 1998, 1999, and 2000.

21 (e) SURVEY.—For carrying out the survey under sec-
22 tion 202, there is authorized to be appropriated, in addi-
23 tion to the amount authorized under subsection (a) of this
24 section, \$400,000 for each of the fiscal years 1994, 1995,
25 1996, 1997, 1998, 1999, and 2000.

1 (f) AUTHORIZATION.—For carrying out the study
2 under section 401, there is authorized to be appropriated
3 such sums as may be necessary.

4 (g) NO OFFSET.—No Federal agency shall offset
5 funds made available pursuant to this Act for tribal justice
6 systems against funds otherwise available for use in con-
7 nection with tribal justice systems.

8 (h) ALLOCATION OF FUNDS.—In allocating funds ap-
9 propriated pursuant to the authorization contained in sub-
10 section (a) of this section among the Bureau, Office, tribal
11 governments, and tribal judicial conferences, the Secretary
12 shall take such action as may be necessary to ensure that
13 such allocation is carried out in a manner that is fair and
14 equitable, and is proportionate to base support funding
15 under section 203 received by the Bureau, Office, tribal
16 governments, and tribal government members comprising
17 a judicial conference.

18 (i) INDIAN PRIORITY SYSTEM.—Funds appropriated
19 pursuant to the authorizations provided by this section
20 and available for a tribal justice system shall not be sub-
21 ject to the Indian priority system. Nothing in this Act
22 shall preclude a tribal government from supplementing
23 any funds received under this Act with funds received
24 from any other source including the Bureau or any other
25 Federal agency.

1 **TITLE VI—DISCLAIMERS**

2 **SEC. 601. TRIBAL AUTHORITY.**

3 Nothing in this Act shall be construed to—

4 (1) encroach upon or diminish in any way the
5 inherent sovereign authority of each tribal govern-
6 ment to determine the role of the tribal court within
7 the tribal government or to enact and enforce tribal
8 laws;

9 (2) diminish in any way the authority of tribal
10 governments to appoint personnel;

11 (3) impair the rights of each tribal government
12 to determine the nature of its own legal system or
13 the apportionment of authority within the tribal gov-
14 ernment;

15 (4) alter in any way traditional dispute resolu-
16 tion forums;

17 (5) imply that any tribal court is an instrumen-
18 tality of the United States; or

- 1 (6) diminish the trust responsibility of the
- 2 United States to Indian tribal governments and
- 3 tribal justice systems of such governments.

Passed the Senate July 21 (legislative day, June 30), 1993.

Attest:

Secretary.

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